

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 418 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMJI BHIKHA KOLI

Versus

STATE OF GUJARAT

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Appearance:

MR KB ANANDJIWALA for Petitioners

MR MA PATEL, Ld. APP for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/10/98

ORAL JUDGEMENT

Rule. Learned APP Mr. M.A. Patel, waives the service of the rule on behalf of respondent-State of Gujarat.

2. The petitioners have challenged legality, validity and propriety of orders passed by Judicial Magistrate First Class, Rapar, District Kutch-Bhuj, dtd.2.6.97, in the proceedings of Criminal Case No.249 of

1997, taking cognizance of the offence registered at Rapar Police Station, vide Crime Register C.R. No.3/97, dtd.14.1.97, and had committed the case to the Sessions Court, District Kutch. The petitioners have also challenged legality, validity and propriety of orders passed by learned Additional Sessions Judge, District Kutch-Bhuj, dtd.9.6.98, in the proceedings of Sessions Case No.62 of 1997.

3. The present petitioners are facing prosecution for the offences made punishable under sections.143, 147, 148, 149, 186, 332, 333 and 307 of Indian Penal Code, in respect to an incident which is registered as offence at Rapar Police Station vide Crime Register C.R.No.3 of 1997 on dtd.14.1.1997.

That according to prosecution First Information was lodged on 14.1.97, at Rapar Police Station, around 20.30 hours against present petitioners alleging that when a police party of a Prohibition Squad led by Police Sub Inspector O.M. Raval went to the house of petitioner No.1 (accused No.1) for the purpose of carrying out a prohibition raid on receipt of intelligence report; petitioners formed an unlawful assembly with a common object to use force and violence with deadly weapons and to cause rioting and assault on police party led by Police Sub Inspector O.M. Raval with a view to resist the raid being carried out on the said house. It is also alleged by the prosecution that during the said incident, an attempt on life of PSI O.M. Raval was also made by deadly weapons by present petitioners, and thereby petitioners were arrested and investigation was made in respect to said offence. That petitioners were committed to Sessions Court by learned JMFC Rapar, District Kutch, and the case was registered as Sessions Case No.62 of 1997, after following prescribed procedure under section 209 of the Cr.p.c. vide impugned order dtd.2.6.97.

4. That present petitioners had moved an application Ex.15 in the proceedings of Sessions Case No.62/97, contending that cognizance taken by learned JMFC, Rapar in respect to Criminal Case No.249/97, which has arisen from Crime Register C.R. No.3/97, dtd.14.1.97, registered at Rapar Police Station, is illegal and without jurisdiction on the ground that one of the offence charged against present petitioners as accused of said Criminal Case No.249/97, is the offence made punishable under section 186 of Indian Penal Code. That the cognizance of said offence is barred under section 195 (1)(a)(i) of Code of Criminal Procedure, 1973, (hereinafter referred to as the Code), unless the

complaint is made in writing to the court by specified officer or subordinate officer, to the said specified officer who is a public servant.

5. That learned Addl. Sessions Judge heard the parties and vide impugned orders dtd.9.6.98, rejected the said application of the present petitioners and directed to frame charge against the petitioners. Hence, the petitioners have filed present Revision Application as stated hereinabove.

6. Learned Advocate Mr. K.B. Anandjiwala has assailed the impugned orders contending that section 195 (1)(a)(i) prescribe a bar of taking cognizance in respect to offences specified therein. That section 186 is one of the section as specified under section 195 (1)(a)(i) of the Code. Thereby unless a complaint in writing is made by the public servant who is alleged to have been voluntarily obstructed in due discharge of his duties, or any subordinate officer to him no court can take cognizance of such offence. Shri Anandjiwala has referred to and relied on definition of, "complaint" given vide section 2(d) of the Code, and has urged that expression "complaint" having been specifically defined; excludes any "information" recorded by in charge of police station under section 154 of the Code. Under such circumstances, the offence registered vide Crime Register No.3/97, dtd.14.1.97, cannot be said to be a complaint within the meaning of section 2(d) of the Code, and as such, learned JMFC ought not to have taken cognizance of the same much less committing the accused to Sessions Court on filing of a charge-sheet. However, despite pointing out the said infirmity, learned Addl. Sessions Judge has misdirected himself to the facts involved in the present matter and had rejected the application. It is also submitted by Shri Anandjiwala that learned Addl.Sessions Judge has held that subject complaint is filed not only in respect to offence made punishable under section 186 of IPC, but under other sections in respect to offences against the human body also. That the charge against the accused for Sections which are not covered under section 195, being different and distinct is not affected by Sec.195 of Code. Thereby learned Addl.Sessions Judge has come to the conclusion that proceedings are not barred under section 195 (1)(a)(i) of the Code.

7. Learned APP Mr. M.A. Patel, has supported the orders contending that if there are more than one offences charged against the accused, some of which are not covered under section 195, then there is no bar for

prosecuting the complaint against the accused under section 195, and as such learned Addl.Sessions Judge is justified in passing the impugned order.

8. It is undisputed that allegations made in the complaint against present petitioners include allegations in respect to offence made punishable under section 186 of IPC. It is true that petitioners are also charged with other offences like offences made punishable under sections 143, 147, 148, 149, 332, 333 and 307 of IPC, which are not covered under section 195. However, it is well accepted proposition of law that where an accused commits some offences which are separate and distinct from those contained in section 195; section 195 will affect only the offences mentioned therein unless such other offences form an integral part of the same so as to amount to offences committed as a part of the same transaction. That in such case the other offences would also fall within the ambit of sec.195 of the Code. That in the instant case if the complaint recorded as FIR is read as a whole the petitioners have formed unlawful assembly with an object to resist a prohibition raid carried out by PSI O.M. Raval and his squad by using force with deadly weapons and causing rioting and even making an attempt on life of PSI O.M. Raval, in prosecution of the common object to prevent the raiding party to enter into the house of petitioner no.1 and to carry out the raid in due discharge of their duty. That thereby entire prosecution of voluntary causing obstruction to the public servant by forming unlawful assembly with an object to resist the same and using deadly weapon to cause riot and even to make an attempt on life of the PSI who led the raiding party is a single transaction and integral part of the offence constituting and made punishable under section 186 of IPC. In other words, the offences charged against the petitioners under secs.143, 147, 148, 149, 332, 333 and 307 of IPC, cannot be split from the complaint for a separate offence in the facts and circumstances of the present case, and thereby cognizance in respect to said offences are also barred under sec. 195 (1)(a)(i) of the Code, as held by Supreme Court in the case reported vide A.I.R. 1984 S.C. - 1108.

9. It may be noted that learned Addl.Sessions Judge while passing the impugned order has relied on observations made by High Court of Kerala in the matter of M. Chacko Vs. State of Kerala reported vide 1985 Cri.L.J. 120. That learned Addl. Sessions Judge appears to have missed the relevant portion as stated by High Court of Kerala in the said matter vide para.9 as

observed hereinunder:

"However, the position may be different when during the course of the same transaction offences falling within the two categories are committed. In such cases, it may not be possible to split up the transaction and to hold that there can be valid prosecution for offences not mentioned in S. 195 of the Code, without written complaint of the public authority or the court, as the case may be. At the same time, if the facts give rise to distinct offences, some attracting the operation of s.195 and others not so, the bar can operate only regarding the former and not regarding the latter."

10. In view of the above stated discussion, the impugned orders passed by learned Addl. Sessions Judge, Kutch-Bhuj, dtd.9.6.98, in the proceedings of Sessions Case No.62/97, cannot be sustained as well as order passed by learned JMFC, Rapar, dtd.2.6.97 in the Criminal Case No.249/97 and deserve to be quashed and set aside.

11. It appears from the record that the learned Addl. Sessions Judge after rejecting the application of the present petitioners Ex.15, has framed charge against present petitioners as accused of Sessions Case No.62/97, thereby said fact is also required to be considered while passing the order.

12. The impugned order of Learned JMFC Rapar, dtd.2.6.97, committing criminal case No. 249/97, to the Sessions Court as well as the orders of learned Additional Sessions Judge, District Kutch-Bhuj, dtd.9.6.98, passed in Sessions Case No.62/97, rejecting the application of the petitioners and directing to frame charge against the petitioners are hereby quashed and set aside. The petitioners as accused of Sessions Case No.62/97 are discharged and the complaint against present petitioners registered vide Criminal Case No.249/97, stands rejected as incompetent. However, it is clarified that, it shall be open to the prosecution to file fresh proceedings against present petitioners by following procedure prescribed by law. That it is stated at Bar on behalf of petitioners, that petitioner No.1 is in judicial custody while petitioners Nos.2 to 7 are released on bail. Hence, it is ordered that Bail Bond of petitioners Nos. 2 to 7 shall stand cancelled after the period of three months from the date of this order and petitioner no.1 shall be released from the judicial custody, if not required in any other case, on his executing a bond of Rs.5,000/- (Rupees Five Thousand

Only) and on furnishing a surety of the like amount to appear before concerned police station and/or competent court as and when called within a period of three months from the date of this order. On the lapse of said period of three months, if no fresh proceedings are initiated against petitioner no.1, the bond executed by him shall stand cancelled and the surety shall be discharged.

Rule is made absolute accordingly.

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